

lation shall constitute a separate violation. The amount of such civil penalty shall be assessed by the Administrator, or his designee, by written notice. In determining the amount of such penalty, the Administrator shall take into account the nature, circumstances, extent and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(2) Any person against whom a civil penalty is assessed under paragraph (1) of this subsection may obtain a review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28. The findings and order of the Administrator shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5.

(3) If any person subject to section 9151 of this title fails to pay an assessment of a civil penalty against him after it has become final, or after the appropriate court has entered final judgment in favor of the Administrator, the Administrator shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(4) The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this subsection.

(d) Criminal penalties

(1) Any person subject to section 9151 of this title is guilty of an offense if he willfully commits any act prohibited by such section.

(2) Any offense, other than an offense for which the punishment is prescribed by section 9113 of this title, is punishable by a fine of not more than \$75,000 for each day during which the violation continues. Any offense described in paragraphs (2), (3), (4), and (5) of section 9151 of this title is punishable by the fine or imprisonment for not more than 6 months, or both. If, in the commission of any offense, the person subject to section 9151 of this title uses a dangerous weapon, engages in conduct that causes bodily injury to any Federal officer or employee, or places any Federal officer or employee in fear of imminent bodily injury, the offense is punishable by a fine of not more than \$100,000 or imprisonment for not more than 10 years, or both.

(e) In rem liability of vessels

Any ocean thermal energy conversion facility or plantship licensed pursuant to this chapter and any other vessel documented or numbered under the laws of the United States, except a public vessel engaged in noncommercial activities, used in any violation of this chapter or of any rule, regulation, order, license, or term or

condition thereof, or other requirements of this chapter, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof, whenever it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation a consenting party or privy to such violation.

(Pub. L. 96-320, title III, §302, Aug. 3, 1980, 94 Stat. 995; Pub. L. 98-623, title VI, §602(e)(5), Nov. 8, 1984, 98 Stat. 3412.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (2), (b)(2), and (e), was in the original "this Act", meaning Pub. L. 96-320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-623 substituted "to halt any violation" for "any violation".

§ 9153. Enforcement

(a) Enforcement responsibility of Administrator of National Oceanic and Atmospheric Administration; Coast Guard

Except where a specific section of this chapter designates enforcement responsibility, the provisions of this chapter shall be enforced by the Administrator. The Secretary of the department in which the Coast Guard is operating shall have exclusive responsibility for enforcement measures which affect the safety of life and property at sea, shall exercise such other enforcement responsibilities with respect to vessels subject to the provisions of this chapter as are authorized under other provisions of law, and may, upon the specific request of the Administrator, assist the Administrator in the enforcement of any provision of this chapter. The Administrator and the Secretary of the department in which the Coast Guard is operating may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment, including aircraft and vessels, and facilities of any other Federal agency or department, and may authorize officers or employees of other departments or agencies to provide assistance as necessary in carrying out subsection (b) of this section. The Administrator and the Secretary of the department in which the Coast Guard is operating may issue regulations jointly or severally as may be necessary and appropriate to carry out their duties under this section.

(b) Enforcement activities of authorized officers

To enforce the provisions of this chapter in or on board any ocean thermal energy conversion facility or plantship or any vessel subject to the provisions of this chapter, any officer who is authorized by the Administrator or the Secretary of the department in which the Coast Guard is operating may—

(1) enter or board, and inspect, any ocean thermal energy conversion facility or plantship or any vessel which is subject to the provisions of this chapter;

(2) search the vessel if the officer has reasonable cause to believe that the vessel has been used or employed in the violation of any provision of this chapter;

(3) arrest any person subject to section 9151 of this title if the officer has reasonable cause to believe that the person has committed a criminal act prohibited by sections 9151 and 9152(d) of this title;

(4) seize the vessel together with its gear, furniture, appurtenances, stores, and cargo, used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this chapter if such seizure is necessary to prevent evasion of the enforcement of this chapter;

(5) seize any evidence related to any violation of any provision of this chapter;

(6) execute any warrant or other process issued by any court of competent jurisdiction; and

(7) exercise any other lawful authority.

(c) Jurisdiction; venue

Except as otherwise specified in section 9125 of this title, the district courts of the United States shall have exclusive original jurisdiction over any case or controversy arising under the provisions of this chapter. Except as otherwise specified in this chapter, venue shall lie in any district wherein, or nearest to which, the cause of action arose, or wherein any defendant resides, may be found, or has his principal office. In the case of Guam, and any Commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii. Any such court may, at any time—

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security; and

(4) take such other actions as are in the interest of justice.

(d) Definitions

For the purposes of this section, the term “vessel” includes an ocean thermal energy conversion facility or plantship, and the term “provisions of this chapter” or “provision of this chapter” includes any rule, regulation, or order issued pursuant to this chapter and any term or condition of any license issued pursuant to this chapter.

(Pub. L. 96-320, title III, §303, Aug. 3, 1980, 94 Stat. 996; Pub. L. 98-623, title VI, §602(a)(10), Nov. 8, 1984, 98 Stat. 3411.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 96-320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-623 substituted “in or on board any ocean thermal energy conversion facility or plantship or any vessel” for “on board any ocean thermal energy conversion facility or plantship or other vessel” in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98-623 substituted “enter or board, and inspect, any ocean thermal energy conversion facility or plantship or” for “board and inspect”.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 9161. Law of the Sea Treaty

If the United States ratifies a treaty, which includes provisions with respect to jurisdiction over ocean thermal energy conversion activities, resulting from any United Nations Conference on the Law of the Sea, the Administrator, after consultation with the Secretary of State, shall promulgate any amendment to the regulations promulgated under this chapter which is necessary and appropriate to conform such regulations to the provisions of such treaty, in anticipation of the date when such treaty shall come into force and effect for, or otherwise be applicable to, the United States.

(Pub. L. 96-320, title IV, §401, Aug. 3, 1980, 94 Stat. 998.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 96-320, Aug. 3, 1980, 94 Stat. 974, known as the Ocean Thermal Energy Conversion Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

§ 9162. International negotiations

The Secretary of State, in cooperation with the Administrator and the Secretary of the department in which the Coast Guard is operating, shall seek effective international action and cooperation in support of the policy and purposes of this chapter and may initiate and conduct negotiations for the purpose of entering into international agreements designed to guarantee non-interference of ocean thermal energy conversion facilities and plantships with the thermal gradients used by other such facilities and plantships, to assure protection of such facilities and plantships and of navigational safety in the vicinity thereof, and to resolve such other matters relating to ocean thermal energy conversion facilities and plantships as need to be resolved in international agreements.

(Pub. L. 96-320, title IV, §402, Aug. 3, 1980, 94 Stat. 998.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 96-320, Aug. 3, 1980, 94 Stat.